III. REMARKS

Applicants have considered the Office Action with mailing date of May 20, 2010. Claims 1-9, 11-18 and 20-26 are pending in this application. Applicants have herein amended claims 1, 9, and 18.

Applicants are not conceding in this application that those claims are not patentable over the art cited by the Office. The present claim amendments and cancellations are only for facilitating expeditious prosecution of the application. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants respectfully reserve the right to pursue the full scope of the subject matter of these original claims and other claims in one or more subsequent patent application that claim(s) priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 1-5, 7-9, 11-14, 16-18, 20-23 and 25-26 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Duggan et al. (U.S. Patent No. 6,002,871), hereafter "Duggan," in view of Dinker et al. (U.S. Patent Pub. No. 20040199815, which was given in error as 20040199825 in the Office Action), hereafter "Dinker," in view of Partamian et al. (U.S. Patent No. 7,062,755), hereafter "Partamian," in view of Firth (U.S. Patent No. 5,987,517), hereafter "Firth." Claims 6, 15 and 24 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Duggan in view Dinker in view of Partamian in view of Firth and in view of "The JAVA ™ Virtual Machine Specification" by Lindholm, hereinafter "Lindholm." Applicants respectfully present the following arguments for the Office's consideration.

A. REJECTION OF CLAIMS 1-5, 7-9, 11-14, 16-18, 20-23 AND 25-26 UNDER 35 U.S.C. 103(a)

With regard to the 35 U.S.C. §103(a) rejection over Duggan, Dinker, Partamian, and Firth, Applicants assert that the references cited by the Office do not teach or suggest each and every feature of the claimed invention. For example, with respect to independent claim 1, Applicants assert that the cited references fail to teach or suggest, *inter alia*, "instantiating, via the test script, a plurality of instances of the test application using threads, wherein the instantiating and execution of each of the plurality of instances of the test application occur within a single process." The Office admits that Duggan fails to teach or suggest that the plurality of instances occur within a single process, and instead asserts that this feature is taught by Dinker. The Office posits that Dinker teaches each test agent 110 may be a implemented as a multithreaded application, citing Par. 0028 and 0031 of Dinker, and that using the single agent of Duggan with the multithreaded agents of Dinker teaches the features of the claim. (Office Action, Pages 6-7). However, Applicants respectfully disagree with the combination of the references. For instance, as is clearly stated in Dinker, the test agents 110 are consistently a plurality of test agents, not a single agent. Dinker in fact teaches away from the single test agent of Duggan, stating that "by implementing test cluster 100 from several multi-threaded test processes (i.e. test agents 110)" there is "less thread starvation than if the same number of clients were simulated by a single multi-threaded process." (Dinker, Para. 0031). As such, Dinker viewed alone or in combination with Duggan fails to teach or suggest the feature of instantiating each of the plurality of instances of the test application within one process. Claims 9 and 18 include similar features. Firth and Partamian fail to cure this deficiency. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With further respect to independent claim 1, Applicants respectfully assert, in addition to the above arguments, that the cited references also fail to teach or suggest, *inter alia*, "sharing all services and memory space exclusively dedicated to the single process with others of the plurality of instances." Claim 1. The Office admits that Duggan and Dinker do not explicitly disclose sharing all services and memory space among the plurality of instances. Rather, the Office cites a passage of Partamian that teaches a general description of processes and threads, specifically citing that "threads in the same process share information **using** memory, atomic structures, mutexes, semaphores, etc." (Partamian, Col. 3, lines 12-17, emphasis added). Applicants, however, assert that the Office has misinterpreted the passage cited, as emphasized above. The passage states that threads within a process share information by using memory, not that they share a memory space. There is further no reference to sharing services. However, for clarification, Applicants have amended the claim to clearly indicate that the services and memory space are dedicated exclusively for the single process. As currently amended, Partamian clearly fails to teach or suggest this feature, as sharing information using memory clearly is not services and memory space dedicated for a single process. As such, the cited combination fails to teach or suggest that all services and memory space are shared among the plurality of instances, and Fink fails to cure this deficiency. Accordingly, Applicants request that the Office withdraw the rejection of claim 1. Further, claims 9 and 18 include similar features and withdrawal of the rejections is respectfully requested.

With further respect to independent claim 1, Applicants continue to respectfully assert, in addition to the above arguments, that the cited references also fail to teach or suggest, *inter alia*, "… identifying application protocol interfaces (APIs) …, prior to the instantiating step…[and] providing a test script capable of invoking the APIs …". Claim 1. The Office admits that Duggan, Dinker, and

Partamian do not explicitly disclose that its command module is implemented as APIs. Rather, the Office continues to cite a passage of Firth that teaches, generically, that APIs exist, reciting "functions in the Internet API reside in a dynamic link library (DLL)." Col. 2, lines 63-67. First, this reference describing API simply describes it with no reference to test applications or any related information. Further, as previously stated, the Office attempts to replace whole pages of Duggan that describe the formation of scripts with one generic sentence describing where an API is stored. Although the Office attempts to explain that only one sentence of Duggan would be replaced (Office Action, Page 4), this is simply not true. Duggan's entire disclosure relies upon the use of Visual Basic 5.0. For instance, Col. 14 of Duggan using Visual Basic is not the only reference to the program, rather the entire description of code up to Col. 21 is a description of the code used with Visual Basic. This description is preceded by Col. 13 of Duggan describing that the Test Tool Program also uses Visual Basic, and that the code modules and forms are the building blocks of the program. (Duggan, Col. 13, Lines 22-41). As such, entire pages do describe the use of Visual Basic, which is the Microsoft Program used in the entirety of the application. In fact, at Page 9 of the Office Action, the Office quotes the ease of use of Duggan with no knowledge of underlying programmed instruction of the command module needed, citing Col. 14, Lines 2-4 of Duggan. Applicants note that this is in reference to the preferred embodiment described in both Col. 13 and Col. 14, which utilizes the Visual Basic program for such an ease of use. Applicants respectfully submit that the reference to an API in Firth has nothing to do with creating testing of application programs, as in Duggan, and any attempt to incorporate this generic API into the Duggan Visual Basic GUI based system of Duggan would in fact, at best, lead to undue experimentation and yield

unpredictable results. Accordingly, Applicants request that the Office withdraw the rejection of claim 1, as well as claims 9 and 18 which include similar features.

In the same vein, Applicants reiterate each of the foregoing arguments with respect to independent claims 9 and 18 and respectfully request withdrawal of the rejections.

With further respect to dependent claims, Applicants herein incorporate the arguments presented above with respect to the independent claims from which the claims depend. Furthermore, Applicants submit that all dependant claims are allowable based on their own distinct features. Since the cited reference does not teach each and every feature of the claimed invention, Applicants respectfully request withdrawal of this rejection.

B. REJECTION OF CLAIMS 6, 15 and 24 UNDER 35 U.S.C. §103(a)

With regard to the 35 U.S.C. §103(a) rejection over Duggan, Dinker, Partamian, Firth and Lindholm, Applicants submit that the combined teachings of Duggan, Dinker, Partamian, Firth and Lindholm do not teach or suggest each and every feature of the claimed invention. For example, with respect to dependent claims 6, 15 and 24, Applicants incorporate the above arguments that the cited combination is deficient in teaching the claimed feature of "instantiating, via the test script, a plurality of instances of the test application using threads, wherein the instantiating and execution of each of the plurality of instances of the test application occur within a single process," claim 1, as well as the other arguments. Further, while Lindholm discloses a generic Java™ Virtual Machine, it does not disclose the instantiation of multiple instantiated threads within a single process for use in testing a server application. Applicants respectfully submit that a person of ordinary skill applying Lindholm in combination with Dugan will not be able to achieve the results of the claimed invention

without undue experimentation, at best. The Office's proposed combination of Dugan and Lindholm would lead to unpredictable results. As such, the combined teachings of Dugan, Dinker, Partamian, Firth and Lindholm do not support the Office's assertion of a prima facie obviousness. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

IV. CONCLUSION

In addition to the above arguments, Applicants submit that each of the pending claims is patentable for one or more additional unique feature. To this extent, Applicants do not acquiesces to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

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